



Helsinki, 1 July 2010  
ED/32/2010

**TASKS, DUTIES AND POWERS OF THE DATA PROTECTION OFFICER  
AND THE DATA CONTROLLER**

(Decision by the Executive Director)

<b>Owner: Minna Heikkilä</b> <b>Validity: Indefinite</b>	<b>Distribution:</b> Executive Director Quality Manager Directors Heads of Unit Intranet Mail Registration
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AS THE EXECUTIVE DIRECTOR OF THE EUROPEAN CHEMICALS AGENCY

**Having regard** to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by Community institutions and bodies and on the free movement of such data<sup>1</sup>, and in particular Article 24(8) and the Annex thereof,

**Having regard** to Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC<sup>2</sup> and in particular Article 83 thereof,

**Whereas:**

- (1) Regulation (EC) No 45/2001, hereinafter referred to as the 'Data Protection Regulation' sets out the principles and rules applicable to all Community institutions and bodies and provides for the appointment by each Community institution or body of a Data Protection Officer.
- (2) The first Data Protection Officer for the European Chemicals Agency (ECHA) was appointed in 2008<sup>3</sup>.
- (3) The Data Protection Officer should aim to ensure that the rights and freedoms of the data subjects are unlikely to be adversely affected by processing operations and should advise both data subjects and the management of ECHA as to how to get into compliance with the Data Protection Regulation.
- (4) Article 24(8) of the Data Protection Regulation requires that further implementing rules concerning the Data Protection Officer shall be adopted by each Community institution or body in accordance with the provisions in the Annex. The implementing rules should in particular concern the tasks, duties and powers of the Data Protection Officer.
- (5) It is necessary to define who exercises the tasks of the controller and to establish a framework concerning the notifications of processing operations and the register thereof.
- (6) It is also appropriate to establish a procedure for investigations and complaints in the area of data protection,

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<sup>1</sup> OJ L 8, 12.1.2001, p.1.

<sup>2</sup> OJ L 396, 30.12.2006, p.3.

<sup>3</sup> Decision of the Executive Director (ED/71/2008).

I HAVE DECIDED THE FOLLOWING:

#### **A. The Data Protection Officer**

1. The Data Protection Officer (DPO) is appointed by the Executive Director for a maximum term of five years. The term is renewable up to a maximum total period of ten years. After his or her appointment the DPO shall be registered with the European Data Protection Supervisor by the appointing authority. With respect to the performance of his or her duties, the DPO may not receive any instructions. The DPO shall ensure in an independent manner the internal application of the provisions of the Data Protection Regulation.
2. The main tasks of the DPO are listed in Article 24 of the Data Protection Regulation and are as follows:
  - a) ensuring that controllers and data subjects are informed of their rights and obligations pursuant to the Data Protection Regulation;
  - b) responding to requests from the European Data Protection Supervisor (EDPS) and, within the sphere of his or her competence, cooperating with the EDPS at the latter's request or on his or her own initiative;
  - c) ensuring in an independent manner the internal application of the provisions of the Data Protection Regulation;
  - d) keeping an electronic register of the processing operations involving personal data notified to him/her by the controller, containing the items of information referred to in Article 25(2) of the Data Protection Regulation;
  - e) notifying the EDPS of the processing operations likely to present specific risks within the meaning of Article 27 of the Data Protection Regulation.

In addition to the main tasks mentioned above, the DPO shall have the tasks, duties and powers as stated in points 3 to 8 below.
3. The DPO may make recommendations for the practical improvement of data protection within ECHA and advise the controller(s) concerned on matters related to the application of data protection provisions.
4. The DPO may, on his or her own initiative, investigate matters and occurrences directly relating to his or her tasks and which come to his or her notice, and report back to ECHA or to the controller(s) concerned.
5. The DPO shall be the main point of contact for the EDPS and will support the Executive Director in this matter when he is addressed directly by the EDPS.
6. In performing his or her duties, the DPO shall be granted access at all times to the data forming the subject/matter of the processing operations and to all offices, data-processing installations and data carriers in case the DPO considers this to be necessary for fulfilling his/her duties. Every controller concerned shall be required to assist the DPO in performing his or her duties and to give information in reply to questions.

7. The DPO may be consulted by the controller(s), the Staff Committee or any individual, without going through the usual hierarchy, on any matter concerning the interpretation or application of the Data Protection Regulation within ECHA.
8. To the extent required, the DPO shall be relieved of other activities. The DPO to whom Article 339 of the Treaty on the Functioning of the European Union shall apply, shall be required not to divulge information or documents, which they obtain in the course of their duties without prejudice to exchanges with the European Data Protection Supervisor.
9. The points 2 to 8 above apply in the same way to the Agency staff allocated to the DPO.

## **B. The Data Controller**

1. ECHA shall be the controller as defined in Article 2(d) of the Data Protection Regulation and referred to in Article 25(2)(a) thereof. As each organisational unit determines the purposes and the means of processing of personal data, the tasks of the controller are in practise exercised by the different units of the Agency. Accordingly, each Head of Unit shall be responsible for exercising the tasks of the controller for the processes in his/her Unit (hereafter 'the controller').
2. The controllers shall give prior notice to the DPO of the information listed in Article 25(2) of the Data Protection Regulation on any processing operation in his/her Unit involving personal data in due course and without unnecessary delay.
3. When personal data relating to a data subject is collected, the controller shall provide these persons with the necessary information, as defined in Article 11 and 12 of the Data Protection Regulation.
4. In addition, the controller is responsible for the implementation of the Data Protection Regulation in his/her unit and thus for ensuring that his/her staff have the necessary instructions in place.

## **C. Investigation and complaints procedure**

1. The DPO may, on request, investigate matters and occurrences directly relating to his or her tasks. If the requester or complainant is an individual, or is acting on behalf of an individual, the DPO must to the extent possible ensure confidentiality governing the request, unless the data subject concerned gives his/her unambiguous consent for the request to be handled otherwise.
2. The request for an investigation or a complaint shall be addressed to the DPO in writing. In accordance with Article 14 of the *Code of Good Administrative Behaviour for the Staff of the European Chemicals Agency in their relations with the public*, the DPO shall send an acknowledgement of receipt within 15 working days upon receipt, and verify whether the request is to be treated as confidential. In the event of obvious misuse of the right to request an investigation, the DPO shall not be obliged to report back to the requester.

3. The DPO shall request a written statement on the matter from the controller who is responsible for the processing operation in question. The controller shall provide his/her response to the DPO within 15 working days following its receipt. The DPO may wish to receive complementary information from him and/or other parties within 15 working days following its receipt.
4. The DPO shall respond to the person who requested the investigation or made a complaint within two months following its receipt. This period may be suspended until the DPO has obtained any further information that he or she may have requested from the person that made the request.
5. Upon closure of the procedure, the DPO may make recommendations to the controller concerned. The DPO shall keep track and report on a regular basis to the Executive Director of ECHA on the activities concerning the investigation and complaints procedure. In case of a serious breach of the Data Protection Regulation by the controller, the DPO shall immediately inform the Executive Director thereof, who may decide on the necessary measures to be taken.
6. No one shall suffer prejudice on account of a matter brought to the attention of the DPO alleging that a breach of the provisions of the Data Protection Regulation has taken place.

#### **D. Administrative formalities**

1. In the first quarter of each year the DPO shall adopt an annual report relating to the previous year which shall be delivered to the Executive Director.
2. In the last quarter of each year the DPO shall draft a work plan for the forthcoming year.

#### **E. Entry into force**

This decision shall enter into force on the date of its adoption.

Done at Helsinki on 1 July 2010



Geert Dancet  
Executive Director